

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

WANJUAN MEDIA (TIANJIN) CO., LTD. a.k.a.
PILOT FILM AND TELEVISION MEDIA (TIANJIN)
CO., LTD.,

Plaintiff,

Case No.:

v.

1:22-cv-01434-JPO

AMAZON.COM, INC., AMAZON.COM SERVICES
LLC, and “JOHN DOES” 1-5,

Defendants.

-----X

**PLAINTIFF’S RESPONSE TO DEFENDANTS’ RULE 56.1
STATEMENT OF MATERIAL FACTS**

Pursuant to Federal Rule of Civil Procedure 56 and SDNY Local Civil Rule 56.1, Plaintiff Wanjuan Media (Tianjin) Co., Ltd. a.k.a. Pilot Film and Television Media (Tianjin) Co. Ltd. (the “Plaintiff” or “Wanjuan Media”), submits this response to Defendants’ Local Rule 56.1 Statement of Material Facts.

Prime Video

1. Prime Video is an online streaming service operated by Amazon.com Services LLC that makes video content such as movies and TV shows available on demand to Amazon Prime members. First Amended Complaint, Dkt. 19 (“FAC”) ¶¶ 4, 16; Ahlvers Decl. ¶ 3.

Response: Undisputed.

2. Prime Video streams both Amazon original content and content licensed from third parties (e.g., movie studios). Ahlvers Decl. ¶ 4.

Response: Undisputed.

3. In addition, partners like HBO and Showtime provide content through a subscription service that allows Prime members to subscribe and add a “Channel” from the content provider to their Prime membership. *Id.*

Response: Undisputed.

4. For content offered by certain partners, access to that particular partner’s channel on Prime Video requires a paid subscription. *Id.*

Response: Undisputed.

5. In November 2017, Amazon and DramaFever Corp., a video streaming platform specializing in Asian programming content and acquired by Warner Bros. in 2016, partnered together to launch a channel on Prime Video known as “DramaFever Premium.” *Id.* ¶ 5; de Castro Decl. ¶ 4.

Response: Undisputed.

6. In that same month, Amazon and DramaFever executed a Digital Video License Agreement (“DramaFever Agreement”) to memorialize the parties’ rights and obligations with respect to DramaFever Premium. *See generally* Li Decl. Ex. 3; de Castro Decl. ¶ 4.

Response: Disputed to the extent that it is unclear whether the DramaFever Agreement is directly connected to the DramaFever Premium. See Li Decl. Ex. 3.

7. The DramaFever Agreement laid out the terms and conditions upon which DramaFever would make available content on Prime Video through the subscription-based DramaFever Premium channel. Li Decl. Ex. 3 at AMAZON_WANJUAN_000034, 48.

Response: Disputed to the extent that it is unclear whether the DramaFever Agreement is directly connected to the DramaFever Premium. See Li Decl. Ex. 3.

8. In the DramaFever Agreement, DramaFever committed to add new content to DramaFever Premium on a weekly basis. *Id.* at AMAZON_WANJUAN_000048.

Response: Undisputed.

9. To add new content to DramaFever Premium, the parties agreed that DramaFever would provide notice of the new titles through what is called an “avails notice” that identifies, for example, the name, availability dates, availability territories, and other metadata for each newly added title. *Id.*

Response: Undisputed.

“General and I” TV Series

10. “General and I” is a Chinese television series released in January 2017. Li Decl. Ex. 4 at 40:5-9.

Response: Undisputed.

11. Approximately two years prior to the release, in April 2015, Shanghai Croton Culture Media Co., Ltd. (“Croton”) and Paile Film and TV Media (Tianjin) Co., Ltd. (“Pilot”) entered into a “TV Series Joint Production Agreement” regarding the creation and production of “General and I” (“2015 Joint Production Agreement”). Li Decl. Ex. 6 at AMAZON_WANJUAN_000159, 164.

Response: Undisputed.

12. Under the 2015 Joint Production Agreement, Croton is a co-owner of all copyrights arising from the creation of “General and I.” *Id.* at AMAZON_WANJUAN_000162-63; Gai Decl. ¶ 2.

Response: Undisputed.

Licensing and Streaming of “General and I” on Prime Video

13. In December 2016, Croton and DramaFever executed an agreement through which Croton granted DramaFever non-exclusive “[o]nline distribution rights [of ‘General and I’] on DramaFever Platforms with sublicense/redistribution rights (e.g., Hulu, Netflix, iTunes, Amazon).” Li Decl. Ex. 2; Gai Decl. ¶ 3; de Castro Decl. ¶ 3 & Ex. A.

Response: Undisputed.

14. The parties expressly recognized “Amazon Prime” as one of the platforms on which DramaFever would have the right to distribute and sublicense “General and I.” Li Decl. Ex. 2; Gai Decl. ¶ 3; de Castro Decl. ¶ 3 & Ex. A.

Response: Undisputed.

15. In December 2017, DramaFever provided an avails notice to Amazon that added the title “General and I” to DramaFever Premium. *See generally* Li Decl. Ex. 9; *see also* de Castro Decl. ¶ 5.

Response: Undisputed.

16. At that time, “General and I” represented one of approximately thousands of titles available through DramaFever Premium. Li Decl. Ex. 1 at 22:17-25.

Response: Undisputed.

17. Beginning December 2017, “General and I” was made available for streaming on the DramaFever Premium channel on Prime Video. Li Decl. Ex. 1 at 70:18-23, 79:19-80:6 & Exs. 10-11.

Response: Undisputed.

18. In October 2018, however, Warner Bros. instructed Amazon to shut down DramaFever Premium. Ahlvers Decl. ¶ 6; Li Decl. Ex. 1 at 70:24-71:6; de Castro Decl. ¶ 6.

Response: Undisputed.

19. Following Warner Bros.’s instructions, Amazon discontinued DramaFever Premium and permanently disabled access to video content previously available through DramaFever Premium, including “General and I,” in October 2018. Ahlvers Decl. ¶ 7; Li Decl. Ex. 1 at 70:24-71:6, 72:20-73:6.

Response: Disputed. The screenshots taken by Wanjuan Media’s attorneys suggest that it is possible Amazon was still streaming “General and I” at the time when the customers made the comments about “General and I” in November 2020 on Prime Video’s website. In addition, Amazon’s response email to Wanjuan Media’s cease and desist letter dated October 4, 2021 suggest Amazon might discontinue the streaming of the “general and I” as late as October 2021. Zhao Decl. ¶¶ 23, 25.

20. “General and I” streamed on Prime Video for less than a year, i.e., between December 2017 and October 2018. Li Decl. Exs. 10-11 & Ex. 1 at 49:12-20, 70:18-71:6.

Response: Disputed. The screenshots taken by Wanjuan Media’s attorneys suggest

that it is possible Amazon was still streaming “General and I” at the time when the customers made the comments about “General and I” in November 2020 on Prime Video’s website. In addition, Amazon’s response email to Wanjuan Media’s cease and desist letter dated October 4, 2021 suggest Amazon might discontinue the streaming of the “general and I” as late as October 2021. Zhao Decl. ¶¶ 23, 25.

21. Wanjuan’s corporate representative has not been able to watch the show on Prime Video in 2019 or later. Li Decl. Ex. 4 at 102:8-11.

Response: Undisputed.

22. Although the video content itself was no longer accessible and could no longer be played, Amazon did not take down the historical catalog product detail page for “General and I.” Ahlvers Decl. ¶ 8.

Response: Undisputed. And the product detail pages of “General and I” contain images from all 62 episodes of the TV Show. Zhao Decl. ¶ 23.

23. The product detail page for a particular product provides background information such as product description and reviews. *Id.*

Response: disputed to the extent that the product detail pages of “General and I” contain images from all 62 episodes of the TV Show. Zhao Decl. ¶ 23.

24. Amazon typically allows product detail pages to remain active to allow consumers to research and obtain information about products that were previously in the catalog. *Id.* ¶ 9.

Response: disputed to the extent that the product detail pages of “General and I” contain images from all 62 episodes of the TV Show. Zhao Decl. ¶ 23.

25. Amazon allows customers to leave reviews for a product even if the product itself is no longer available on Amazon's services, since a customer may have experienced or purchased the product elsewhere or before the product became unavailable. *Id.* ¶ 10.

Response: disputed to the extent that the product detail pages of “General and I” contain images from all 62 episodes of the TV Show. Zhao Decl. ¶ 23.

26. In September 2021, attorneys representing Wanjuan sent Amazon a letter. Li Decl. Ex. 8 at 1.

Response: Undisputed.

27. In the letter, Wanjuan claimed to be one of the co-owners of copyright in “General and I” and raised concerns about the Amazon product detail page for “General and I.” *Id.*

Response: Undisputed.

28. Specifically, Wanjuan alleged Amazon has “maintained, without proper authorization, a webpage on [its] paid video streaming service site, Amazon Prime Video, that displays a full list of all 62 episodes of the Copyrighted Work including an English title, a cover photo, a screenshot from each of the 62 episodes, and an English description of the plot and the length of playtime of each episode.” *Id.*

Response: Undisputed.

29. Wanjuan further stated that “[b]oth the dates and content of the customer reviews indicate that the Copyrighted Work previously has been, without proper authorization, uploaded unto Amazon Prime Video and streamed to paid customers of Amazon.com.” *Id.* at 1-2.

Response: Undisputed.

30. Amazon confirmed in an email response that it took down the product detail page for “General and I” on October 4, 2021. Bransten Decl. ¶ 6 & Ex. A.

Response: Disputed. It is unclear from Amazon’s email whether Amazon took down the product detail page for “General and I” on October 4, 2021 or Amazon made “General and I” “no longer available to stream, rent or purchase on Prime Video” on October 4, 2021. See **Ex. A** to Bransten Decl.

31. Even after initiating the lawsuit and receiving a copy of the license from Croton in discovery, Wanjuan has never attempted to contact Croton, its copyright co-owner, to verify the licensing arrangement. Li Decl. Ex. 4 at 90:18-23.

Response: Disputed. Croton Culture was no longer a co-owner of “General and I” at the time when the lawsuit was filed. See Zhao Decl. ¶¶ 11, 14.

Dated: Queens, New York
April 21, 2023

Respectfully submitted,

KEVIN KERVENG TUNG, P.C.
Attorneys for Plaintiff

/s/ *Ge Li*

By: Ge Li, Esq.
Queens Crossing Business Center
136-20 38th Avenue, Suite 3D
Flushing, New York 11354
(718) 939-4633
gli@kktlawfirm.com